ETHICS AND PUBLIC POLICY CENTER

April 6, 2026

***Via Federal eRulemaking Portal***

Robert F. Kennedy, Jr.,
Secretary
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

**Re: ACF NPRM, Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children; Rescission; Docket ID ACF-2026-04515; RIN 0970-AD19**

Dear Secretary Kennedy:

We are scholars at the Ethics and Public Policy Center (EPPC), and we write in support of the U.S. Department of Health & Human Services (HHS) Administration for Children and Families' (ACF) proposal to rescind the final rule "Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children" published on April 30, 2024.[1]

Rachel N. Morrison is a Fellow at the Ethics and Public Policy Center (EPPC), director of EPPC's Administrative State Accountability Project (ASAP), and a former attorney with the Equal Employment Opportunity Commission. Eric Kniffin is an EPPC Fellow, member of ASAP, and a former attorney in the U.S. Department of Justice's Civil Rights Division.

Through the 2024 Final Rule, the Biden administration sought to create special rules for children in foster care who identify as "LGBTQI+." For example, the Rule required title IV-E/IV-B agencies to ensure that a "Designated Placement" is available for all such children, established procedural steps for title IV-E/IV-B agencies to implement the new Designated Placements, and added requirements for foster care providers of these placements.[2] The Biden Final Rule added 45 CFR § 1355.22 and amended 45 CFR § 1355.34(c)(2)(i).

[1] HHS, Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children; Rescission, 91 Fed. Reg. 11017 (Mar. 6, 2026), https://www.federalregister.gov/d/2026-04515 (proposing to rescind HHS, Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children, 89 Fed. Reg. 34818 (Apr. 30, 2024), https://www.govinfo.gov/content/pkg/FR-2024-04-30/pdf/2024-08982.pdf) [hereinafter "Biden Final Rule"].

[2] *See, e.g.,* 89 Fed. Reg. at 34,829 (designated placement and services for LGBTQI+ children), 34,836 (placement of transgender and non-conforming children in foster care).

In September 2024, Texas filed suit against the Biden Final Rule in the Eastern District of Texas.[3] Approximately nine months later, in June 2025, the federal district court vacated the final rule in its entirety and dismissed plaintiffs' remaining claims without prejudice.[4]

This NPRM would remove the Biden Final Rule's regulatory provisions—45 CFR § 1355.22 and cross references to designated placement requirements in 45 CFR § 1355.34(c)(2)(i). The NPRM does not propose any new requirements or changes. ACF explains that the Biden Final Rule is no longer in effect or enforceable after it was vacated by a federal court. It states that eliminating regulatory provisions that are not in effect will eliminate uncertainty, provide clarity of regulatory requirements for the public and regulated entities, and ensure that the regulations are accurate and up-to-date.

**We support ACF's proposal to rescind the Biden Final Rule.** We agree with HHS that the primary reason to rescind the rule is that it has been vacated and is not in effect. This is sufficient grounds to support HHS's proposal. Additionally, for the reasons set out in Section I below, the district court's order is correct: the Biden Final Rule exceeded HHS's authority under federal statutes and the U.S. Constitution. This public comment also offers additional reasons, not considered in the district court's order, which also support the proposal to rescind the Biden foster care final rule.

## I. The Biden Final Rule exceeds HHS's authority.

The Biden Final Rule exceeds HHS's authority under federal statutes and the U.S. Constitution.

### A. The Biden Final Rule violates the Administrative Procedures Act.

As the federal district court held in *Texas v. U.S. Department of Health and Human Services*, the Biden Final Rule violates the Administrative Procedure Act in two ways: "(1) HHS lacked rulemaking authority to issue the Final Rule and (2) the Final Rule conflicts with the text of Title IV-E."[5]

As the court explained, the Social Security Act gives HHS "only limited administrative review of States' foster-care systems—not the authority to create a new category of foster children and require new and untested methods in fostering them"[6] It found that HHS lacked a statutory basis or historical precedent to single out a subset of foster kids for special rules.[7]

---

[3] Complaint, *Texas v. Becerra,* No. 24-348 (E.D. Tex. filed Sep. 24, 2024).

[4] Order and Final Judgment, *Texas v. Becerra*, No. 24-348 (E.D. Tex. June 13, 2025), available at https://storage.courtlistener.com/recap/gov.uscourts.txed.233141/gov.uscourts.txed.233141.37.0.pdf. In January 2025, Kentucky also challenged the Biden Final Rule before being granted voluntary dismissal. Complaint, *Kentucky v. HHS*, No. 25-002 (E.D. Ky. filed Jan. 17, 2025); Order Granting Notice of Voluntary Dismissal, *Kentucky v. HHS,* No. 25-002 (E.D. Ky. Aug. 21, 2025).

[5] Mem. Op. and Order at 7, *Texas v. Becerra*, No. 24-348 (E.D. Tex. Mar. 13, 2025), available at https://storage.courtlistener.com/recap/gov.uscourts.txed.233141/gov.uscourts.txed.233141.30.0.pdf.

[6] *Id.* at 2.

[7] *Id*. at 9-12.

As the district court noted, the Biden Final Rule's lack of rulemaking authority is even clearer in light of the major questions doctrine.[8] In *West Virginia v. EPA*, the Supreme Court stated that the "major question doctrine" limits the ability of federal agencies to regulate on matters of "vast economic and political significance" without "clear congressional authorization."[9]

The Supreme Court further developed the major questions doctrine in *Loper Bright Enterprises v. Raimondo*, where it denied that courts must defer to what federal agencies say about federal statutes.[10] The Court recognized that "statutes ... have a single, best meaning" that is "fixed at the time of enactment."[11] *Loper Bright* recognizes that courts, not federal bureaucrats, are in the best position to determine what statutes mean.

Moreover, there are frequently good reasons to doubt that regulations actually reflect an honest effort to discern congressional intent. As former Secretary of Labor Eugene Scalia has noted, regulations often reflect "policy choices, often outfitted after the fact with legal explanations."[12] Even worse, "[s]ome agency heads not only don't interpret; at times they're indifferent to—even contemptuous of—the right legal answer."[13]

All of these concerns are relevant here. As the Texas district court noted in its order, the Biden Final Rule fails the major questions doctrine because it is "unlikely that Congress would authorize HHS to issue a rule with such sweeping policy implications by using the statutory language here."[14] Not only does the Biden Final Rule address a matter of great political significance; it also intrudes into an area that is the domain of state law.[15]

### B. The Biden Final Rule violates the First Amendment.

The Biden Final Rule also violates the First Amendment to the United States Constitution. It explicitly states that use of so-called "conversion therapy" or "efforts that attempt to suppress or change a child's sexual orientation or gender identity" are prohibited.[16] As we (and others) pointed out in our public comments in opposition to what became the Biden Final

---

[8] *Id*. at 12-13.

[9] *West Virginia v. EPA*, 597 U.S. 697, 716, 723 (2022).

[10] *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024).

[11] *Id*. at 400 (quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)).

[12] *See* Eugene Scalia, *Chevron Deference Was Fun While It Lasted*, WSJ (Jan. 9, 2024), https://www.wsj.com/opinion/chevron-deference-was-fun-while-it-lasted-legal-scotus-partisan-regulation-changes-bddbfe27.

[13] *Id*.

[14] *Id*. at 12.

[15] Mem. Op. and Order at 13, *Texas v. Becerra.*

[16] 89 Fed. Reg. at 34836 (claiming that "conversion therapy" efforts "are not supported by credible evidence and have been rejected as harmful by the American Academy of Child and Adolescent Psychiatry, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, and the National Association of Social Workers, among others").

Rule, prohibiting talk therapy constitutes viewpoint discrimination, which is prohibited under the First Amendment's Free Speech Clause.[17]

Yet despite these warnings, HHS doubled down in its Final Rule, stating explicitly that the new regulations require title IV-E/IV-B agencies to ensure that LGBQI+-identifying children must have "access to age- or developmentally appropriate services that are supportive of their sexual orientation and gender identity or expression, including clinically appropriate mental and behavioral health supports, *which can include forms of talk therapy*."[18]

The Supreme Court's March 31, 2026, opinion in *Chiles v. Salazar* leaves no doubt that the Biden Final Rule violates the First Amendment's Free Speech Clause.[19] Similar to the Biden Final Rule, the Colorado law challenged in *Chiles* prohibited "*any* practice or treatment" by licensed counselors "that attempts … to change an individual's sexual orientation or gender identity," while permitting counselors "to engage in 'practices' that provide [a]cceptance, support, and understanding for the facilitation of an individual's … identity exploration and development."[20] In short, the Colorado counseling law *allowed speech* moving minors toward "identity exploration and development" and "gender transition" while *forbidding speech* aimed at helping them accept their sex, thereby prescribing "what views [a counselor] may and may not express" on a contested question of human identity.

The Supreme Court found that this asymmetry constituted viewpoint discrimination because government was permitting one side of an ongoing debate and censoring the other.[21] The Court explained, "Colorado's law does not just regulate the content of Ms. Chiles's speech. It goes a step further, prescribing what views she may and may not express."[22] Under the First Amendment, "any law that suppresses speech based on viewpoint represents an 'egregious' assault" on Americans' "inalienable right to think and speak freely" and "faith in the free marketplace of ideas as the best means for discovering truth."[23]

The Biden Final Rule violates this same principle. Like the Colorado "conversion therapy" law, the foster-care rule requires agencies to ensure and privilege "Designated Placements" defined by a commitment to "support" a child's LGBTQI status or identity, specialized training in affirming that identity, and facilitation of access to "supportive" services, while treating non-affirming approaches as disfavored or, in some contexts, abusive. Just like the Colorado law struck down in *Chiles*, the Biden Final Rule channels speech and conduct toward a

---

[17] EPPC Scholars Comment Opposing HHS Proposed Rule "Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B, RIN 0970-AD03" (Nov. 27, 2023), https://media.eppc.org/2023/11/EPPC-Comment-Opposing-HHS-Foster-Care-Proposed-Rule.pdf [hereinafter "EPPC Comment"]. *See also* Press Release, EPPC, EPPC Scholars and Others Submit Comments Opposing HHS Proposed Rule Requiring "Affirmation of Foster Child's "LGBTQI+ Identity," (Nov. 29, 2023), https://eppc.org/news/eppc-scholars-and-others-submit-comments-opposing-hhs-proposed-rule-requiring-affirmation-of-a-foster-childs-lgbtqi-identity/ (collecting comments).

[18] 89 Fed. Reg. at 34836 (emphasis added).

[19] 607 U.S. ___ (2026) (March 31, 2026).

[20] *Chiles,* slip op. at 3 (quoting Colo. Rev. Stat. §12–245–202(3.5)(a), (b)(I) (emphasis added)).

[21] *Id*. at 8-9.

[22] *Id*. at 13.

[23] *Id*. at 23 (quoting *Rosenberger v. Rector and Visitors of Univ. of Va*., 515 U. S. 819, 829 (1995)).

state-favored "gender-affirming" vision of the person and effectively forbids state-backed providers from acting on the competing viewpoint that children should be helped to accept their biological sex—exactly the kind of one-way ratchet the Court condemned.

## II. Even were it legal, the Biden Final Rule harms children and families.

EPPC's Administrative State Accountability Project engaged on dozens of regulatory proposals advanced by the Biden administration.[24] Yet out of all these rules, none except the Biden Title IX Rule provoked a stronger response from American citizens and the media.[25] This is likely because the foster care rule is a radical proposal that, until it was vacated, posed a serious threat to American children, their families, the foster care system, and society more generally.

Our public comments—submitted to HHS[26] and to OIRA[27]—identified ways the Biden administration's foster care proposal was bad policy that threatened the common good. Our concerns were not resolved in the Biden Final Rule and those concerns now provide further reasons why HHS should rescind the Biden Final Rule.

Perhaps the biggest issue with the rule is that it implies that "abuse" is not affirming a child's sexual orientation or so-called gender identity or expression, including by not using the child's preferred name and pronouns or allowing the child to dress in a way that reflects his or her self-proclaimed identity. As we explained in our public comment:

> Consistent with statutory requirements, all children in foster care should receive "safe and proper" care, including children who identity as "LGBTQI+." This rule, however, proposes special considerations for "LGBTQI+ children" premised on two incorrect and harmful assumptions: (1) not "affirming" a child's self-proclaimed LGBTQI+ identity is unsafe and abuse; and (2) foster care providers who hold traditional beliefs (religious or otherwise) about marriage, sexuality, and gender are unable to provide LGBTQI+ children with safe and loving homes. These premises are not only false but are harmful to children in foster care and

---

[24] *See* EPPC, *EPPC Engagement on Agency Actions*, https://eppc.org/engagement-on-agency-actions/.

[25] *See, e.g.*, Jordan Boyd, *Not Encouraging A Foster Child's Rainbow Identity Would Be 'Abuse' Under Proposed HHS Rule*, The Federalist (Nov. 21, 2023), https://thefederalist.com/2023/11/21/not-encouraging-a-foster-childs-rainbow-identity-would-be-abuse-under-proposed-hhs-rule/; M.J. Koch, *New Federal Rules for Foster Care Could, Critics Say, Rip Apart Families* (Nov. 27, 2023), https://www.nysun.com/article/new-federal-rules-for-foster-care-could-critics-say-rip-apart-families; Tyler O'Neil, *Lack of 'Affirmation' Is Child Abuse: New Biden Rule Applies Transgender Standard to Foster Care*, The Daily Signal (Nov. 23, 2023), https://www.dailysignal.com/2023/11/23/new-biden-rule-reveals-transgender-movements-endgame-no-dissenting-parents-allowed/; *Planned US Regulation: Parents Who Do Not Accept Their Child's Trans Identity Commit Child Abuse*, Apollo News (translated) (Nov. 22, 2023), https://apollo-news.net/geplante-us-vorschrift-eltern-die-trans-identitaet-ihres-kindes-nicht-akzeptieren-begehen-kindesmissbrauch/.

[26] EPPC Comment, *supra*, note 10.

[27] EPPC E.O. 12866 Meeting Comment re: "Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B," RIN 0970-AD03 (Apr. 2, 2024), https://media.eppc.org/2024/04/EPPC-Comment-EO-12866-Meeting-on-HHS-Foster-Care-Rule.pdf [hereinafter "EPPC OIRA Comment"].

> will undermine religious freedom and parental rights far beyond the foster care context.[28]

Rachel Morrison also addressed this concern in an article for *The Federalist Society*:

> Underlying ACF's proposal is the assumption that only 'affirmation' is 'safe and appropriate.' If it is legally established that not affirming a child's LGBTQI+ identity constitutes 'mistreatment' or 'abuse,' this standard could have massive ramifications for families seeking to adopt, biological parents of children both in and out of foster care, and individuals who work with children.[29]

Morrison continued, "If legally established, these premises could have massive ramifications not only for foster care, but also for adoption, custody disputes, and child care and education."[30]

As we explained in our public comments, the Biden Final Rule ignored real threats to safety experienced by LGBTQI+-identifying children.[31] It created confusion[32] and raised religious freedom[33] and federalism[34] concerns. These concerns were shared by others who also submitted public comments opposing the rule.[35]

The Biden Final Rule is also bad public policy because it was based on bad science. The Rule misrepresented research and data, relied on outdated studies, and relied on biased surveys produced by ideologically-driven activist organizations.[36] As Figliolia and Sapir note, the Biden Final Rule cited "self-reported survey data to show a supposed connection between 'gender affirmation' and positive mental-health outcomes in trans-identifying kids."[37] However, as Figliolia and Sapir note, such surveys "cannot support the ACF's conclusion that 'significant mental health disparities' facing 'LGBTQI+' youth "result from experiences of stigma and discrimination."[38]

---

[28] EPPC Comment at 1.

[29] Rachel N. Morrison, *Non-Affirmation of Child's "LGBTQI+" Identity Is Abuse Under Proposed Foster Care Rule,* FedSoc Blog (Nov. 19, 2023), https://fedsoc.org/commentary/fedsoc-blog/non-affirmation-of-child-s-lgbtqi-identity-is-abuse-under-proposed-foster-care-rule.

[30] Rachel N. Morrison, *How Democrats Set the Stage In 2023 for An LGBT Onslaught In 2024*, The Federalist (Jan. 9, 2024), https://thefederalist.com/2024/01/09/how-democrats-set-the-stage-in-2023-for-an-lgbt-onslaught-in-2024/.

[31] *See* EPPC Comment at 7-8; EPPC OIRA Comment at 3-7.

[32] *See* EPPC Comment at 8-13; EPPC OIRA Comment at 7-13.

[33] *See* EPPC Comment at 13-14; EPPC OIRA Comment at 15-16.

[34] *See* EPPC Comment at 16-17; EPPC OIRA Comment at 16-17.

[35] *See EPPC Scholars and Others Submit Comments Opposing HHS Proposed Rule Requiring "Affirmation" of a Foster Child's "LGBTQI+ Identity"*, EPPC (Nov. 29, 2023), https://eppc.org/news/eppc-scholars-and-others-submit-comments-opposing-hhs-proposed-rule-requiring-affirmation-of-a-foster-childs-lgbtqi-identity/ (collecting comments).

[36] *See* EPPC Comment at 4-6.

[37] Joseph Figliolia & Leor Sapir, *Foster Children: the New Pawn in the Gender Wars*, City Journal (May 14, 2024), https://www.city-journal.org/article/foster-children-the-new-pawn-in-the-gender-wars.

[38] *Id*.

It also ignored a growing body of relevant international evidence about the best way to support youth with gender dysphoria.[39] This was true when the Final Rule was issued in 2024. And recent developments have made it even more clear that the "gender affirming" approach the Final Rule requires is based on junk science. Such developments include the UK's Cass Review,[40] the WPATH Files,[41] and the HHS Review issued last October.[42]

## III. The Biden Final Rule would impose costs and harms; Rescinding the Rule provides cost savings and eliminates harms.

We also reiterate our concern expressed in our public comments that the Biden Final Rule overstated its benefits and undercounted its costs.[43] Our concerns align with the ACF's analysis that rescinding the Final Rule would result in cost savings of about $35.5 million (about $2.5 million annualized).[44]

We also note that the Biden Final Rule caused intangible harms such as reducing placement and housing opportunities for all children in foster care—including LGBTQI+-identifying children.[45] Faith-based organizations and families of faith are significant sources of foster care placements in the United States. By signaling that traditional religious and moral views on sexuality and the nature of the human person render a provider ineligible for the federally favored "Designated Placement" category, the Biden Final Rule predictably chills participation by such providers. Fewer faith-based providers in the system means fewer available placements overall, which in turn means more children—including LGBTQI+-identifying children—waiting longer for homes, being placed farther from their immediate and extended families, or being moved more frequently.

The Biden Final Rule thereby undermined its stated purpose: in the name of improving outcomes for LGBTQI+-identifying foster youth, it reduced the very supply of stable, caring homes on which all foster children depend. As EPPC has consistently argued, the premise that a provider must ideologically affirm a child's self-proclaimed sexual orientation or gender identity to offer that child safe and loving care is not only false, it harms children. Not only because gender ideology is contrary to human flourishing but also because the Final Rule contracts the pool of qualified families and sacrifices placement stability on the altar of ideological conformity.

---

[39] *See* EPPC Comment at 5-6.

[40] Hilary Cass, Independent Review of Gender Identity Services for Children and Young People: Final Report (2024), https://webarchive.nationalarchives.gov.uk/ukgwa/20250310143933/https://cass.independent-review.uk/home/publications/final-report/.

[41] Mia Hughes, Environmental Progress, The WPATH Files: Pseudoscientific Surgical and Hormonal Experiments on Children, Adolescents, and Vulnerable Adults (Mar. 5, 2024), *available at* https://static1.squarespace.com/static/56a45d683b0be33df885def6/t/65e64b9e5cbd756da9fbbdfa/1709591479160/Final+WPATH+Report.pdf.

[42] Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices, Office of Population Affairs, HHS (Nov. 2025), https://opa.hhs.gov/gender-dysphoria-report.

[43] *See* EPPC Comment at 14-16; EPPC OIRA Comment at 13-15.

[44] 91 Fed. Reg. at 11019.

[45] *See* EPPC Comment at 14-16; EPPC OIRA Comment at 13-15.

The Biden Final Rule also violates parents' constitutional rights, rights the Supreme Court has affirmed in two recent cases. Last summer, in *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025), the Court held that parents have a First Amendment free-exercise right "to direct the religious upbringing" of their children and noted that this would be an empty promise if the Constitution permitted government to indoctrinate their children into gender ideology over and against their objections.[46] Just last month, the Supreme Court built on *Mahmoud* in *Mirabelli v. Bonta*, 607 U.S. _ (2026), which again dealt with parents' rights in the face of government efforts to expose children to gender ideology.[47] *Mirabelli* held that "unconsented facilitation of a child's gender transition" likely constitutes an even greater intrusion on parents' free-exercise rights than the LGBTQ+ storybook instruction at issue in *Mahmoud*. It affirmed that parents have a constitutional right to participate in major decisions concerning their children's gender identity and mental health.

The Biden Final Rule conflicts with both decisions. The Rule requires foster-care agencies to privilege "gender-affirming" designated placements, provide access to "supportive" talk therapy, and treat non-affirming provider conduct as a form of mistreatment. As such, the rule systematically sidelines the religious and conscientious objections of parents and guardians in violation of the principles set out in *Mirabelli* and *Mahmoud*.

Rescinding the rule would eliminate these harms.

## IV. Rescinding the Biden Final Rule aligns with Trump Administration's priorities.

In addition to the above, we also note that rescinding the Biden Final Rule would be consistent with the Trump administration's broader policy objectives and domestic agenda. For example, we submit that the proposed rescission would be consistent with the following executive orders and presidential memorandum issued by President Trump.

- Executive Order 14192, "Unleashing Prosperity Through Deregulation," acknowledges the "ever-expanding morass of complicated Federal regulation" and its "massive costs on the lives of millions of Americans" and seeks to "alleviate unnecessary regulatory burdens placed on the American people."[48]

- Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative" sought to "ensure lawful governance" by "rescinding unlawful regulations and regulations that undermine the national interest," including regulations that exceed federal power, are "not authorized by clear statutory authority" and "implicate matters of social, political, or economic significance," and "impose significant costs upon private parties that are not outweighed by public benefits."[49]

[46] *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2360 (2025).

[47] *Mirabelli v. Bonta*, 607 U.S. _ (2026) (March 2, 2026).

[48] 90 Fed. Reg. 9065 (Jan. 31, 2025), https://www.federalregister.gov/d/2025-02345.

[49] 90 Fed. Reg. 10583 (Feb. 19, 2025), https://www.federalregister.gov/d/2025-03138.

- Presidential Memorandum, "Directing the Repeal of Unlawful Regulations," implements EO 14219 and requires agencies to prioritize repealing regulation that are unlawful under ten Supreme Court decisions, including *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and *West Virginia v. EPA*, 597 U.S. 697 (2022).[50]

- Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," recognizes that there are "two sexes, male and female," "these sexes are not changeable," and the sexes are "grounded in fundamental and incontrovertible reality."[51] The order also directs agencies, like HHS, to "enforce all sex-protective laws to promote this reality" and "ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity."[52]

- Executive Order 14187, "Protecting Children From Chemical and Surgical Mutilation," seeks to protect children from the harms of sex-rejecting procedures and directs HHS to take regulatory actions to achieve this aim.[53]

- Executive Order 14190, "Eradicating Anti-Christian Bias," seeks "to protect the religious freedoms of Americans and end the anti-Christian weaponization of government."[54]

## V. HHS should continue its good work by revising or rescinding other Biden-era Final Rules that promote gender ideology.

We are grateful for the Trump Administration's and HHS's efforts to protect children (including those in foster care) and ensure they receive quality care, to combat gender ideology, to base federal policy on basic facts about human biology, and to end government funding and support for sex-rejecting procedures.[55] This is a great service to the American people, fully consistent with HHS's mission: "to enhance the health and well-being of all Americans, by providing for effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services."[56]

---

[50] Presidential Mem., Directing the Repeal of Unlawful Regulations (Apr. 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/.

[51] 90 Fed. Reg. 8615 (Jan. 20, 2025), https://www.federalregister.gov/d/2025-02090.

[52] *Id.*

[53] 90 Fed. Reg. 8771 (Jan. 28, 2025), https://www.federalregister.gov/d/2025-02194.

[54] 90 Fed. Reg. 9365 (Feb. 6, 2025), https://www.federalregister.gov/d/2025-02611.

[55] For instance, the Trump Administration has taken bold actions to fight gender ideology. *See, e.g.*, Exec. Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 90 Fed. Reg. 8615 (Jan. 20, 2025), https://www.federalregister.gov/d/2025-02090; Exec. Order 14187, Protecting Children From Chemical and Surgical Mutilation, 90 Fed. Reg. 8771 (Jan. 28, 2025), https://www.federalregister.gov/d/2025-02194; Exec. Order 14190, Keeping Men Out of Women's Sports, 90 Fed. Reg. 9279 (Feb. 5, 2025), https://www.federalregister.gov/d/2025-02513; Press Release, DOJ, The Department of Justice Proposes Legislation to Protect Children from Gender Mutilation, https://www.justice.gov/opa/pr/department-justice-proposes-legislationprotect-children-gender-mutilation (proposing "Victims of Chemical or Surgical Mutilation Act").

[56] HHS, *About HHS*, https://www.hhs.gov/about/index.html.

While we encourage HHS to finalize its proposal to rescind the Biden Final Rule, we also hope that HHS will continue to work to protecting Americans from other harmful and unlawful Biden-era regulatory actions that advance gender ideology and ignore the best science on how best to help children struggling with gender dysphoria or otherwise confused about their sexual identities. Here we provide a few examples of additional actions HHS could initiate.

We applaud ACF's defense of biological reality and parental rights, including in its "Dear Colleague" Letter sent to all 50 states on March 3, 2026, highlighting the importance of defining abuse and neglect under the Child Abuse Prevention and Treatment Act.[57] We propose that ACF could issue another "Dear Colleague" letter to the states to further clarify the protections and rights foster parents have, including under *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021). For example, it would be helpful if such a letter reassured faith-based providers that they retain the right to operate according to their religious convictions, as affirmed in *Fulton*, and that states may not penalize them for doing so.

We also urge ACF to revise its April 30, 2024 "Unaccompanied Children Program Foundational Rule" ("Foundational Rule").[58] The Foundational Rule is also at odds with President Trump's executive order and policy priorities. The Foundational Rule directs ORR to consider "LGBTQI+ status" for placements and facilitate abortions and sex-rejecting procedures for unaccompanied children. As we explained in a May 2025 public comment: 1) "The Foundational Rule's commitment to gender ideology is at odds with President Trump's executive orders, HHS definitions, and HHS's Gender Dysphoria Report"; 2) "The Foundational Rule refused to honor the Hyde Amendment's consensus on federal funding for abortion and refused to clarify how it would be facilitating sex-rejecting procedures for unaccompanied children"; and 3) "The Foundational Rule refused to make concrete commitments on how ACF would honor its legal obligations under federal laws protecting religious freedom and conscience protections."[59]

Finally, we encourage HHS to revisit another final rule cited in the foster care final rule: the March 2024 "Nine Agency Rule."[60] The Biden Final Rule relies in part on 45 CFR part 87,

---

[57] Dear Colleague Letter from Alex J. Adams, Asst. Sec'y, ACF, to State Health Agency Administrators (Mar. 3, 2026), https://media.eppc.org/2026/03/ACF-CAPTA-Letter.pdf; *see also* Press Release, ACF Defends Biological Reality and Parental Rights in Letter to All 50 States (Mar. 3, 2026), https://acf.gov/media/press/2026/acf-defends-biological-reality-parental-rights-letter-50-states.

[58] 89 Fed. Reg. 34384 (Apr. 30, 2024), https://www.federalregister.gov/d/2024-08329. A proposal to revise the rule in light of the Hyde Amendment is currently pending at OIRA. "Unaccompanied Alien Children Program Foundational Rule; Updates to Accord with the Hyde Amendment," RIN 0970-AD34, https://www.reginfo.gov/public/do/eoDetails?rrid=1252114.

[59] EPPC Public Comment on OMB Interim Final Rule "Unaccompanied Children Program Foundational Rule," RIN 0970-AD16 (May 27, 2025), https://eppc.org/wp-content/uploads/2025/07/EPPC-Comment-HHS-Unnaccomp-Child-Program-Foundational-Rule-Update-RIN-0970-AD16.pdf. *See also* EPPC Public Comment on HHS Proposed Rule "Unaccompanied Children Program Foundational Rule," RIN: 0970-AC93 (Dec. 4, 2023), https://eppc.org/wp-content/uploads/2023/12/EPPC-Comment-on-UC-Program-Proposed-Rule-1.pdf (raising concerns with the proposed rule that became the Foundational Rule); EPPC Comment, E.O. 12866 Meeting, "Unaccompanied Children Program Foundational Rule," RIN: 0970-AC92 (Apr. 1, 2024), https://eppc.org/wp-content/uploads/2024/04/EPPC-Comment-EO-12866-Meeting-on-UC-Program-Rule-2.pdf (same).

[60] Partnerships With Faith Based and Neighborhood Organizations, 89 Fed. Reg. 15671 (Mar. 4, 2024), https://www.federalregister.gov/d/2024-03869.

"Equal Treatment for Faith-Based Organizations."[61] This part was modified by the Biden administration's March 2024 "Nine Agency Rule."[62] As we and others raised in public comments, there are many legal and policy issues with this rule.[63] We encourage HHS to consider revisiting the Nine Agency Rule and encourage HHS to review these and other public comments as part of its review process.

We urge HHS (in conjunction with the other eight agencies) to revise this rule to enable faith-based organizations to partner with the federal government while retaining their rights to make employment decisions based on religion.

**Conclusion**

HHS should finalize its proposed rescission.

Sincerely,

Rachel N. Morrison, J.D.
Fellow and Director
Administrative State Accountability Project
Ethics and Public Policy Center

Eric N. Kniffin, J.D.
Fellow
Administrative State Accountability Project
Ethics and Public Policy Center

[61] 89 Fed. Reg. at 34849.

[62] 89 Fed. Reg. at 15701.

[63] *See* EPPC Scholars Comment Opposing the Nine Agency Proposed Rule "Partnerships With Faith-Based and Neighborhood Organizations" (Mar. 14, 2023), https://media.eppc.org/2023/03/EPPC-Scholars-Comment-Opposing-Nine-Agency-Faith-Based-Partnership-Proposed-Rule.pdf; *EPPC Scholars and Others Oppose Proposed Rule for Faith-Based Organizations Partnering with Nine Agencies*, EPPC (Mar. 14, 2023), https://eppc.org/news/eppc-scholars-and-others-oppose-proposed-rule-for-faith-based-organizations-partnering-with-nine-agencies/ (collecting comments); EPPC Scholars Rachel N. Morrison & Natalie Dodson E.O 12866 Meeting Comment re: "Partnerships with Faith-Based and Neighborhood Organizations," (Feb. 5, 2024), https://media.eppc.org/2024/02/EPPC-Scholars-Comment-EO-12866-Meeting-Nine-Agency-Rule.pdf.